

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HOWARD GALE and RONA GILBERT,

Docket No. 05 CV 2450 (GEL)

Plaintiffs,

ECF Case

-against-

PLAINTIFFS' OBJECTIONS TO  
DEFENDANT'S PROPOSED  
PRE-TRIAL ORDER

SERVICE UNLIMITED,

Defendant.  
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1. Plaintiffs agree that the defendant did work on their premises, but object to defendant's claim that only 40 square feet were stained before the work stopped.
2. Defendants' Exhibit: The file maintained by Service Unlimited. Plaintiffs object to this exhibit based on the fact that the exhibit was requested both at the deposition of Martin Heiser and Igor Slavik and was never provided to plaintiffs' counsel.
3. Plaintiffs object to the testimony of Mark Bukovsky, Crew Chief. Plaintiffs requested that Mr. 'Bukovsky' be produced as a witness for a deposition over 6 weeks ago. Defendant advised he was no longer in its employ and provided his name as Mark Bukovsky with an address, 163 Webster Avenue, Yonkers, NY but no telephone or cell phone number. The person listed at the address provided is: Marek Bukowski, not Mark Bukovsky. All attempts to reach Mr. Bukowski by telephone and by personally visiting his residence have been unsuccessful. Plaintiffs will be severely prejudiced should Mr. Bukowski be permitted to testify without plaintiffs having an opportunity to depose him first.
4. Defendant advertised in its promotional brochure received by plaintiffs, "Fully licensed and insured." They are not fully insured as no insurance carrier has come to the defense of the defendant for its negligence in this matter. Defendant did not have all the insurances as advertised.
5. Plaintiff objects to defendant's proposed jurisdictional motion as the Court set a deadline for such motion and defendant defaulted. The plaintiffs provided two estimates to defendant's counsel which indicate that the repair/renovation of the premises is in excess of \$75,000. These estimates were provided for the specific purpose of refuting defendant's claim that there was no subject matter jurisdiction, and to further forestall a motion that defendant was going to institute but never did, that the amount in controversy was less than \$75,000.

Dated: New York, NY  
January 29, 2007

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